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SFO GOOD-NITE INN LLC, a California Limited Liability Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Oakland Division

SIAUPIA VAOVASA; ELISAPETA
VAOVASA; AND LEALOFI PENITITO,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

SFO GOOD-NITE INN LLC, a California
Limited Liability Company,

Defendant.

No. C 08-1171-SBA

**STIPULATED CONFIDENTIALITY
AGREEMENT**

The parties will be engaged in discovery which may involve disclosure of information considered by one or more parties or third parties to be confidential or proprietary business information, trade secret information, confidential personnel information; and other information conveyed to third parties.

To facilitate the disclosure of documents and information the parties have stipulated to the entry of this protective order ("Order") to protect the confidentiality of information that may be produced or otherwise disclosed either by a third-party or by a party;

IT IS HEREBY stipulated that information and documents considered confidential by a party and otherwise in the captioned action (the "Action") shall be treated as set forth in the following paragraphs;

1 **1. Definitions**

2 a. Parties

3 Only the following persons are "Parties" to the Action: SIAUPIA VAOVASA and
4 ELISAPETA VAOVASA, LEOLOFI PENITITO, (collectively, "VAOVASA"); SFO GOOD-
5 NITE INN LLC, a California Corporation (the "Good Nite Inn"). The "Producing Party" is the
6 party whose documents or information is designated as "Confidential" or "Highly Confidential –
7 Attorneys' Eyes Only" pursuant to this Order.

8 b. Confidential Information

9 "Confidential" is a designation that can be applied to any type or classification or form of
10 information (oral, written, magnetic, electronic or otherwise) whether it be a document,
11 information contained in a document, information revealed during a deposition, information
12 revealed in an interrogatory answer or in a response to a request for admission, information
13 obtained from inspection of premises or things, or otherwise. "Confidential" information means
14 such information as is lawfully entitled to confidential treatment under California law, including,
15 but not limited to, trade secrets, confidential research, development or commercial information
16 which may damage a business commercially or competitively, confidential financial information,
17 confidential personal financial data, income tax returns, personnel records, information protected
18 by Article I, Section 1 of the California Constitution and similar information. In designating
19 information as "Confidential", the Producing Party will make such designation only as to that
20 information that it in good faith believes contains information lawfully entitled to confidential
21 treatment under California law.

22 c. Highly Confidential – Attorneys' Eyes Only Information

23 "Highly Confidential – Attorneys' Eyes Only" is a designation that can be applied to any
24 type or classification or form of information (oral, written, magnetic, electronic or otherwise)
25 whether it be a document, information contained in a document, information revealed during a
26 deposition, information revealed in an interrogatory answer or in a response to a request for
27 admission, information obtained from inspection of premises or things, or otherwise. "Highly
28 Confidential – Attorneys' Eyes Only" information means highly sensitive Confidential

1 information whose disclosure to anyone other than counsel could directly or indirectly cause
2 competitive or commercial damage that is wholly or substantially irreversible. In designating
3 information as "Highly Confidential – Attorneys' Eyes Only", the Producing Party will make such
4 designation only as to that information that it in good faith believes contains information lawfully
5 entitled to confidential treatment under California law and requires the additional protections
6 afforded to "Highly Confidential – Attorneys' Eyes Only" information under this Order.

7 **2. Designating Information as "Confidential" or "Highly Confidential –**
8 **Attorneys' Eyes Only"**

9 a. Documents and things produced that contain "Confidential" or "Highly
10 Confidential – Attorneys' Eyes Only" information may be designated as such by marking the
11 document or thing at or before the time of production as follows: "CONFIDENTIAL" or
12 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." With respect to documents
13 produced on an electronic media, such documents may be designated as "Confidential" or
14 "Highly Confidential – Attorneys' Eyes Only" by placing the appropriate designation either on
15 the disk, CD or other media, or on the individual documents contained on that media.

16 b. In lieu of marking the original of documents, the Producing Party may
17 mark the copies that are produced or exchanged.

18 c. In the event that at the time a document is produced, the designation
19 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" is lacking, and it is later
20 determined, in good faith, that such a designation should have appeared on the document, the
21 Producing Party may restrict future disclosure of the document, consistent with this Order, by
22 notifying the receiving Party in writing of the change in or addition of a restrictive designation.
23 The notice shall include a description of the document and the designation under which future
24 disclosure of the document is to be governed.

25 **3. Handling Confidential or Highly Confidential Information at Depositions**

26 Information disclosed at the deposition of a Party or one of its present or former officers,
27 directors, employees, agents, consultants or experts may be designated as "Confidential" or
28 "Highly Confidential – Attorneys' Eyes Only" by indicating on the record at the deposition that

1 the testimony and/or exhibit is "Confidential" or "Highly Confidential – Attorneys' Eyes Only"
2 and subject to the provisions of this Order. Such Party may also designate additional information
3 disclosed at such deposition that is to be deemed as "Confidential" or "Highly Confidential –
4 Attorneys' Eyes Only" by notifying all other Parties in writing, within fifteen court days of receipt
5 of the transcript, of the specific pages and lines of the transcript that contain "Confidential" or
6 "Highly Confidential—Attorneys' Eyes Only" information. Each Party shall attach a copy of
7 such written statement to the face of the transcript and each copy thereof in his possession,
8 custody or control. Except for use during court proceedings, all information disclosed in a
9 deposition shall be treated as if it had been designated as "Confidential" at the time of the taking
10 of the deposition for a period of fifteen court days after the transcript of said deposition is
11 received by the Party. In the event that a Party wishes to use information disclosed in a
12 deposition in a court proceeding prior to the expiration of the fifteen day period, that Party shall
13 notify the Producing Party of that intention at least 3 court days prior to such use, and the
14 Producing Party shall have 2 court days from the day notice is given to designate such
15 information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only." Nothing in this
16 paragraph will prevent the Producing Party from using its own confidential information disclosed
17 in a deposition prior to the expiration of the fifteen court day period.

18 **4. Use of Confidential or Highly Confidential -- Attorneys' Eyes Only**

19 **Information**

20 Any information designated as "Confidential" or "Highly Confidential – Attorneys' Eyes
21 Only" shall not be used by the Party receiving it for any purpose other than in connection with
22 this litigation. All Confidential or Highly Confidential – Attorneys' Eyes Only information shall
23 be kept in secure facilities at the offices of persons qualified to have access thereto under this
24 Order.

25 **5. Disclosure of Confidential Information**

26 Absent written consent from the Producing Party, any information designated as
27 "Confidential" shall not be made available by the Party receiving it to any persons or entities
28 other than the following:

- a. Any named Party to whom it is necessary that the designated material be shown for purposes of the Action;
- b. Any witness to whom it is necessary that the designated material be shown in connection with that individual's service as a witness in the Action;
- c. The authors, senders, addressees, and copy recipients of the "Confidential" information;
- d. Any person employed or engaged by a Party or its attorneys of record in the Action as an independent consultant or expert (who is not an officer, director or employee of a Party);
- e. Outside counsel to any Party to the Action, and all legal assistants, independent contactors, stenographic and clerical employees working under the supervision of such counsel (not including any named Party to the Action);
- f. Any court reporter or videographer who transcribes testimony in this Action at a deposition; and
- g. The Court and the Court's personnel in this Action, including any special masters or referees appointed by the Court and any mediators selected by the Parties.

6. Disclosure of Highly Confidential – Attorneys' Eyes Only Information

Absent written consent from the Producing Party, any information designated as "Highly Confidential – Attorneys' Eyes Only" shall not be made available by the Party receiving it to any persons or entities other than the following:

- a. The authors, senders, addressees and copy recipients of the "Highly Confidential – Attorneys' Eyes Only" information;
- b. Any person employed or engaged by a Party or its attorneys of record in this Action as an independent consultant or expert (who is not an officer, director or employee of a Party);

- 1 c. Outside counsel to any Party to this litigation, and all legal assistants,
2 independent contractors, stenographic and clerical employees working
3 under the supervision of such counsel (not including any Party to the
4 Action);
- 5 d. Each Party's in-house counsel assisting with this Action, the identity of
6 such counsel to be provided in writing to counsel for the other Parties prior
7 to their review of Highly Confidential – Attorneys' Eyes Only information.
8 In the event that a Party desires to change or supplement the designated in-
9 house counsel, they shall notify the other Parties of the identity of the
10 replacement in-house counsel at least five days prior to providing any
11 Highly Confidential-Attorneys' Eyes Only information to the replacement
12 in-house counsel.
- 13 e. Any court reporter or videographer who transcribes testimony in this
14 Action at a deposition; and
- 15 f. The Court and the Court's personnel in this Action, including any special
16 masters or referees appointed by the Court, and any mediators selected by
17 the Parties.

18 **7. Acknowledgment of Confidentiality Order**

19 Before any Confidential or Highly Confidential – Attorneys' Eyes Only information may
20 be disclosed to persons described in paragraphs 5(a)-(d) or paragraphs 6(a)-(b) or 6(d) above,
21 each person to whom such Confidential or Highly Confidential – Attorneys' Eyes Only
22 information is disclosed shall be provided with a copy of this Confidentiality Order and shall
23 agree in writing to be bound by the terms of this Order in the form of Exhibit A hereto. Such
24 written acknowledgments shall be maintained by the Party making the disclosure for service on
25 the Producing Party at the time of any settlement or judgment in this Action or upon an order of
26 the Court for good cause.

27 **8. Filing Confidential or Highly Confidential Information Under Seal**

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1 No material designated "Confidential" or "Highly Confidential – Attorneys' Eyes Only"
2 shall be filed or disclosed in the public record of this or any other proceeding except that they
3 may be filed with the Court under seal in accordance with the local rules of the Northern District
4 of California.

5 **9. Responding to Subpoena or Service of Process**

6 In the event any person or Party having possession, custody or control of any information
7 designated Confidential or "Highly Confidential – Attorneys' Eyes Only" by another Party
8 receives a subpoena or other process or order to produce such information, such person or Party
9 shall promptly notify in writing the attorneys of record of the Producing Party of the item,
10 document or information sought by such subpoena or other process or order, and shall provide
11 reasonable cooperation with respect to any procedure to protect such information or matter as
12 may be sought to be pursued by the Party whose interests may be affected. If the Party whose
13 interests may be affected makes a motion to quash or modify the subpoena, process or order there
14 shall be no disclosure of the subject matter objected to pursuant to the subpoena, process or order
15 until the Court has ruled on the motion, and then only in accordance with the ruling so made. If
16 no such motion is made despite a reasonable opportunity to do so, the person or Party receiving
17 the subpoena or other process or order shall be entitled to comply with it provided it has fulfilled
18 its obligation hereunder.

19 **10. Miscellaneous Provisions**

20 a. Nothing shall prevent disclosure beyond the terms of this Order if the Party
21 designating the information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only"
22 consents in writing to such disclosure, or if the Court, after notice to all parties, orders such
23 disclosure.

24 b. Nothing in the Order shall prevent a Producing Party from disclosing its
25 own Confidential or Highly Confidential – Attorneys' Eyes Only information.

26 c. No Party shall be responsible to another Party for any use made prior to the
27 receipt of any notice pursuant to paragraphs 2 and 3 of information produced and not designated
28 as "Confidential" or "Highly Confidential – Attorneys' Eyes Only."

1 d. A Party shall not be obligated to challenge the propriety of a
2 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" designation at the time made,
3 and a failure to do so shall not preclude a subsequent challenge thereto. In the event that any
4 Party to this litigation disagrees at any stage of these proceedings with the designation of any
5 information as "Confidential" or "Highly Confidential – Attorneys' Eyes Only," the parties shall
6 try first to resolve such dispute in good faith on an informal basis. If the dispute cannot be
7 resolved, either Party may seek appropriate relief from this Court. The Party asserting that the
8 information should be "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall
9 have the burden of proving the same. No disclosure of designated "Confidential" or "Highly
10 Confidential – Attorneys' Eyes Only" information inconsistent with the obligations of this Order
11 shall be made unless and until the Court orders such.

12 e. Within sixty calendar days after the conclusion of this litigation, unless the
13 Parties agree in writing to the contrary, any originals or reproductions of any documents produced
14 by a Party containing "Confidential" or "Highly Confidential – Attorneys' Eyes Only"
15 information shall be returned to the Producing Party or destroyed. However, outside counsel for a
16 Party shall be entitled to retain for archival purposes one copy of pleadings, correspondence,
17 memoranda, notes and other work product materials which contain or refer to "Confidential" or
18 "Highly Confidential – Attorneys' Eyes Only" information. Insofar as the provisions of this
19 Order restrict the communication and use of the documents produced hereunder, this Order shall
20 continue to be binding after the conclusion of this litigation except that a Party may seek the
21 written permission of the Producing Party or further order of the Court with respect to dissolution
22 or modification of the Order.

23 f. Nothing in this Order shall bar or otherwise restrict any attorney from
24 rendering advice to his or her client with respect to this Action, and, in the course thereof, relying
25 upon his examination of, but without disclosing, "Highly Confidential – Attorneys' Eyes Only"
26 information.

27 g. Nothing in this Order shall apply to information that (a) was known to the
28 receiving Party before disclosure hereunder; or (b) is part of the public domain (i.e., has been

disclosed to or is known to third parties not under restriction of confidentiality) or becomes part of the public domain through no breach of the provisions of this Order; or (c) was lawfully obtained by a Party independently of this litigation or (d) is independently developed by the receiving Party through employees having no access or prior access to the same "Confidential" or "Highly Confidential – Attorneys' Eyes Only" information disclosed hereunder; or (e) is disclosed to the receiving Party by a third party which disclosure does not breach any obligations of confidentiality owed by the third party to the producing Party. However, information designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" shall remain subject to the status given to it under this Order until the disclosing Party expressly in writing agrees to waive such status or the Court rules to the contrary.

h. Nothing in this Order shall require any party to produce any information that is otherwise protected from disclosure pursuant to any applicable privilege and/or statutory authority, and nothing in this Order shall preclude a Party from seeking to compel production of another Party's documents.

i. Nothing in this Order shall bar amendment of this Order by stipulation of the parties or by Order of the Court. Any such amendment made by stipulation of the parties shall be made in writing.

IT IS SO STIPULATED:

Dated: 6/18/08 RELMAN & DANE PLLC

By: Shalini Goel
D. Scott Chang / Shalini Goel
Attorneys for Plaintiffs
Siaupia Vaovasa, Elisapeta Vaovasa, and Lealofi Penitito,
individually and on behalf of all others similarly situated

Dated: June 10, 2008

CARR, McCLELLAN, INGERSOLL, THOMPSON & HORN
Professional Law Corporation

By: David King
David King/Jeremy A. Burns
Attorneys for Defendant SFO GOOD-NITE INN LLC

1 Before the Court is a **STIPULATED CONFIDENTIALITY AGREEMENT**. It is
2 hereby ORDERED that the Parties are bound by the **STIPULATED CONFIDENTIALITY**
3 **AGREEMENT**.

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5 Dated: _____

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7 UNITED STATES DISTRICT COURT JUDGE
8 **SAUNDRA B. ARMSTRONG**
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EXHIBIT A

AGREEMENT REGARDING CONFIDENTIAL INFORMATION

The undersigned agrees to accept the terms of the Order Governing the Production and Exchange of Confidential Information and agrees that he or she will use confidential information only for the purposes of the arbitration of this action and not for any other purpose or any other case.

DATED : _____, 2008

Name (print) _____

PROOF OF SERVICE

I am employed by the law firm of Carr, McClellan, Ingersoll, Thompson & Horn Professional Law Corporation in the County of San Mateo, California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 216 Park Road, P.O. Box 513, Burlingame, California 94011-0513.

I certify that the original papers filed with the Court and all copies of papers, documents, and exhibits, whether filed with the Court or served on other parties, are prepared on recycled paper.

On the date set forth below I served the within:

• **STIPULATED CONFIDENTIALITY AGREEMENT**

on the parties in this action, by placing a true copy thereof in a sealed envelope addressed as follows:

D. Scott Chang, Esq.
Shalini Goel, Esq.
Relman & Dane PLLC
1225 Nineteenth Street, N.W., Suite 600
Washington, D.C. 20036

☒ **By placing in office mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Burlingame, California.

☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 23, 2008


Lori J. Stumpf